IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 6997 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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MINOR YASHINAHMED GAFUR MEMAN - Appellant(s)
Versus
GAFURBHAI USMANBHAI MEMAN & 1 - Defendant(s)

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Appearance :
MS KJ BRAHMBHATT for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1,
MS MEGHA JANI for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 29/08/2006

ORAL JUDGMENT

1. By way of this appeal the appellant has challenged the judgement and award dated 28.09.1998 passed by the Motor Accident Claims Tribunal, Himmatnagar, in Motor Accident Claims Petition No. 731 of 1993 whereby the same was partly allowed.

2. The short facts of the case are that on 08.09.1993 at about 7.15 a.m. the original applicant was travelling in jeep bearing Registration No. G.R.N. 204, near Dharoi reservoir on Vadali Bavsar

Road. The jeep suddenly turtled and original applicant received injuries. He sustained fractured on various parts of his body. The original applicant being a minor at the relevant time filed claim petition through his mother and natural guardian to recover an amount of Rs. 50,000/- towards compensation.

3. Learned advocate for the appellant has submitted that the tribunal ought to have appreciated the fact that looking to the extent and gravity of the injuries suffered by the claimant on the vital parts of the body at the age of 17 years, he would be restricted in his day to day activities and also being handicapped would lead to diminution in the enjoyment of the amenities of the life and social discomfort, therefore the Tribunal after considering all the above factors should have awarded Rs. 15,000/- under the head of shock, pain and suffering.

4. Heard. I have gone through the judgement and award of the tribunal. While passing the order tribunal observed that as far as liability point is concerned, it is an admitted fact that the original

applicant is the son of the original opponent No. 1 who is the driver cum owner of the said vehicle, as per the contentions of the original complainant that the son of the original opponent No. 1 sustained injuries out of vehicular accident. In the petition, the applicant has not mentioned that he was travelling in the jeep as a paid passenger. In Ex. 19 he stated that he paid the fare to his father but in cross examination, he has fairly admitted that the said facts is also not mentioned in police statement. So far as section 147 and 149 of the M.V. Act is concerned, the liability of the insurance company is towards the third party and son of the owner of vehicle is not a third party and the original applicant was representated through his mother at the time of filing the petition. As a matter of fact, father was also a legal gurdian of minor at that time but it seems that same fact has been suppressed in the petition by including mother as a gurdian. It is also to be noted that the son must have not paid any fare to the father and so his submission that he had paid the fare is not acceptable.

5. In view of the above finding I am of the view

that the Tribunal has not committed any error in passing the impugned order. Learned Counsel for the appellant is not able to point out anything contrary to take a different view of the matter. I am in complete agreement with the reasonings adopted and the findings arrived at by the trial court. No case is made out for enhancement. Hence the appeal is dismissed. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*